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SUBJECT: GVN TACKLES LAND ISSUES

Reftels: A) 04 Hanoi 2594, B) HCMC 307, C) 04 HCMC 1173

1. (U) Summary: Vietnam's rapid economic development and the flow of migrants from the crowded and poor Mekong Delta, Red River Delta and Northwest Highlands into urban centers and the Central Highlands have contributed to considerable tension over land issues. While allocation of title to agricultural land improved the lot of Vietnam's small farmers during the 1990s, peasants are now being displaced by rapid urban growth in Vietnam's two crowded deltas. In response, there have been regular protests in front of government buildings with farmers complaining about insufficient compensation for their land and, on occasion, clashing with authorities attempting to resettle them. Rapidly rising real estate prices in urban areas are linked with official corruption. In-migration and disparate rates of economic development have produced tensions over land in the Central Highlands, where inflows of migrants have led to tensions with indigenous ethnic minorities. Vietnam recently introduced a new legal regime to cover land issues, but the new law's ability to significantly curb corruption, abuses and complaints remains in doubt. End Summary.

The New Land Law

2. (U) The basic provisions of land rights in Vietnam are set out in the Land Law of 2003, which came into effect on July 1, 2004, and its nine implementing decrees, only five of which have been released to date. Under the law, all land is officially under the ownership of the State, but long-term land use rights (a.k.a. land leases or land use certificates) represent a legal alternative to ownership and can be acquired for varying lengths of time depending on the type of use and leaseholder. Leases are set at twenty years for agricultural land held by an individual, fifty years for forestry land held by an individual, fifty years for land held by an "economic organization" (including licensed foreign investors), and up to seventy years for investors in projects with "large capital investment but slow capital recovery," or areas under "difficult socio-economic conditions." "Foreign organizations and individuals" can apply for a land lease "for the execution of an investment project in Vietnam." If granted, such leases are for fifty years, or seventy years for large projects or those in underdeveloped areas. Land lease rights for residential land and in urban areas are indefinite.

3. (U) Upon expiry, leaseholders can apply for the renewal of their leases if the land user has "demand for continued use thereof," and can show that "the use of land is in line with approved land use planning." The issue of renewal will be faced when the first round of agricultural leases begins to expire in about ten years. Leases can also be bought and sold. Adding additional levels of complexity, ownership of buildings is generally separate from ownership of the land they stand on. In newer developments, land and buildings generally have unified title, but in urban centers shops and houses are frequently developed on land held by state owned enterprises, ministries, or other government bodies. Further, all Vietnamese have residence cards linking them to a certain province or city. Lack of residency bars them from purchasing land or buildings, as well as from using many public services, including public schools. Many personal residences are guaranteed only by a contract between the migrant purchaser and the residency-holding landowner, under whose name the property officially remains registered. The enforceability of these contracts has not been extensively tested.

4. (U) The transfer of land from State to private hands has been relatively rapid in the countryside, but much slower in urban areas. As of the end of 2003, 90 percent of agricultural land had land leases issued for it, effectively meaning it had been transferred from State to private ownership. Only 25 percent of forest land, which is home to many ethnic minority groups, had leases issued. In urban areas, 20 percent of industrial land and 15 percent of residential land had land leases issued. A Swedish development expert explained that the GVN prioritized the creation of land leases for agricultural land during the 1990s as a way to reduce poverty in the countryside. The complexities of land and property control, the skyrocketing value of land for the State-owned enterprises (SOEs) or

other State bodies that currently hold it, and the desire to avoid paying taxes have contributed to slowing this process in developed areas.

15. (U) Under the Land Law and the 2004 Decree on Compensation, Support and Resettlement when Land is Recovered by the State, authorities can and do exert eminent domain to recover land for use in infrastructure development and economic development, including the creation of industrial parks, economic zones, and "large investment projects." Authorities compensate people displaced either with an equivalent amount of land zoned for the same use, or financially. However authorities generally set a single rate of compensation for all land in a province zoned for a certain use, which creates problems. For example, in 2004, business owners whose shops and land had been seized to widen a main road in Da Nang complained that their compensation did not account for the higher value of street front property. Article 56 of the Land Law stipulates that when the State does set land prices "they are close to the actual prices of land use rights transfer under normal market conditions." The law does not set forth how such normal market rates are to be determined, however.

Urban Sprawl Leads to Tensions

16. (U) While the right to lease holding has not been particularly contentious, acquiring, rezoning and developing land has led to significant conflict. Vietnam's major urban areas are in the midst of a development boom. Greater Ho Chi Minh City is surrounded by a rapidly expanding sprawl of housing and light industry, and Hanoi has plans to more than double the amount of land allocated for new housing and industrial zones by 2010. Large sections of western Hanoi are a forest of half-completed housing blocks and cranes, and middle-class Hanoians compare house prices with a fervor that matches that of their Washingtonian counterparts. Speculators often buy and sell apartments in high-rises numerous times before construction is completed, and prices are extremely high, particularly in comparison to the nominal earning power of most urban Vietnamese. Selling space in yet-to-be-constructed buildings is theoretically illegal in Vietnam, but individuals often pay a "reservation fee" equal to the cost of an apartment that allows them to be allocated one in the new building for free.

17. (U) The rapid growth of urban areas has created considerable friction between developers and municipal government on one side, and displaced landholders on the other. Those displaced, usually small farmers, frequently complain that they are being compensated at far less than a true market rate. They are generally compensated for land seized by the State at the agricultural rate, while the land is then rezoned to the far more valuable rates for residential or commercial land. Much of the windfall in profit between the two rates is generally thought to be returned in kickbacks to the government officials involved in approving the development. Some Ho Chi Minh City developers suggest that the profits of this corruption is then plowed back into land speculation, contributing further to price hikes (Ho Chi Minh City's experience with land development is reported septel from ConGen Ho Chi Minh City).

18. (U) Small protests of peasants pushed off their land by expanding cities are a regular feature in front of the National Assembly building and other government offices in Hanoi. Tensions have at times resulted in violence; in January 2005, villagers in Ha Tay Province sacked and burned a government office building when police tried to clear them off land for which they did not think they had been adequately compensated. Similarly, in December 2004, peasants in an outlying district of Hanoi threw Molotov cocktails at police who were trying to clear them off land a Thai company was planning to develop into a golf course. Unrest connected to land issues in undeveloped rural areas, such as the large-scale protests in Thai Binh Province in 1997, occurred in the past but has been diminished by the GVN's efforts to accelerate the issuance of leases for agricultural land.

19. (U) The Government has made some moves to address this problem. One of the most significant changes in the 2003 Land Law is that private developers must come to an agreement directly with landholders when acquiring land for commercial development. This theoretically includes both Vietnamese and foreign landowners, but Dr. Nguyen Quang Tuyen of the Faculty of Economic Laws at Hanoi Law College told Poloff that he knew of no cases in which a foreign developer had acquired land other than by using the state as an intermediary. Hanoi and Ho Chi Minh City have experimented with market-based measures, such as public auctions, when allocating public land for private development. Prior to the passage of the 2003 law, the State acquired all land from holders and then reallocated it to developers. Authorities have also talked of requiring

developers to provide funds for skills retraining for displaced peasants.

¶10. (U) Dr. Tuyen claimed the rates of compensation for land used in State projects have been raised to more closely align with market rates. Nonetheless they still fall short of market values. "Peasants must make sacrifices for the development of the nation," Tuyen explained. He also alleged that small farmers have unrealistic notions as to the true value of their land. Dao Trung Chinh, Deputy Director of the Department of Land at the Ministry of Natural Resources and the Environment argued that many of the areas of tension have to do with land reallocated before the new, and more equitable, provisions of the 2003 Land Law came into effect. "There have been no protests" about land leases reassigned since then, Chinh claimed.

The Other Type of Rent Seeking

¶11. (U) With the large amount of money connected to land leases in Vietnam's booming cities, rent-seeking behavior is rampant. In May 2004, for example, the Hanoi People's Committee passed a regulation requiring investors to hand over "free of charge" 20 percent of the square footage of apartment blocks to the city for allocation to the city's Department of Natural Resources, Environment, Land and Housing. This is to be put into the city's "land fund" for allocation to the poor, displaced, or individuals who have contributed to the State (in practice, mostly revolutionaries) as the city sees fit. Developers must also allocate 50 percent of high rises and 25 percent of housing development to be sold by the city to "target buyers" at pre-set prices, though the developers gain the proceeds from the sale.

¶12. (U) Personal and political connections are widely rumored to be key in obtaining the right to purchase one of these apartments, many of which are immediately "flipped," or resold to other buyers at a handsome profit. In one instance, according to news reports the Chairman of the Hanoi People's Committee had to apologize to war veterans when it was revealed that lower level officials were demanding payments for them to receive apartments that should have been granted for free. The allocation of a free or "officially priced" apartment represents a massive windfall. Per capita income in Vietnam is USD 537 per year. A 1,400 square foot apartment in western Hanoi currently sells for about USD 100,000.

Land Tensions in the Central Highlands

¶13. (U) The tensions brought on by rapid migration into urban areas are mirrored by a similarly large movement into Vietnam's Central Highlands. According to official GVN statistics, 41 percent of the 1.3 million domestic migrants from 1991 to 2003 resettled into the Central Highlands, mostly Gia Lai, Dak Lak, and Dak Nong provinces. Much of this migration came originally under the New Economic Zones (NEZ) program that brought settlers from the overcrowded Red River Delta in the north and from crowded urban areas in the South after 1975, providing them with residence rights and financial support. With the rapid expansion of coffee production in the 1990s, these programs were overtaken, by "free migration" from other areas of Vietnam, which had no Government support. Currently 70 percent of migrants into the Central Highlands are from the Kinh majority group, and the rest are from nine other ethnic groups, mostly from the North and Northwest Highlands.

¶14. (U) In August 2004, Deputy Prime Minister Nguyen Tan Dung announced that the GVN would suspend official migration programs into the Highlands, and sought to slow free migration, bringing it to a halt by 2010 (Ref. A). GVN officials indicated this is intended to allow ethnic minorities time to improve their participation in economic development without competition from incoming migrants. Whether the suspension of planned migration is being enforced in reality is not clear, although provincial leaders in the Central Highlands assert to us that they are implementing the suspension. Suspending the NEZ programs will likely have little impact, however; they were chronically underfunded and resettled few people in recent years. In discussions with Consulate General Officers, Gia Lai officials indicated they were unwilling to turn away spontaneous migrants (Ref. B), would continue to provide them with subsidies for clearing virgin land and said that they believed the province could accept another 400,000 migrants. Officials in Dak Lak told ConGen officers that they had banned unplanned migration to the province, however.

¶15. (U) Provincial officials recognized that these migrants caused frictions with ethnic minorities, but attributed this to the minorities' perception of unused land as "theirs."

(Ref. C). In a similar vein, Professor Tuyen said that ample land exists in the Central Highlands, but that minorities use it inefficiently. Chinh of the Land Department alleged that minorities find themselves without land because they sell it off to new migrants too freely. Analysts in the donor community in Hanoi suggest that many of the minority groups' problems came during the move to allocate specific land leases for agricultural and forest land during the 1990s. This locked the semi-nomadic swidden farmers onto specific, smaller plots of land and allocated other parts of their wide-ranging territory to newer arrivals. Regardless of the reason, many indigenous ethnic minorities in the Central Highlands perceive themselves as having had land taken or swindled from them, and this represents a driving motivation for unrest in the area.

16. (U) In July 2004, the Government created "Program 132," with the goal of allocating arable land to all ethnic minority households by 2006. Land for use in this program has reportedly been reallocated from State-run farms or reclaimed from unused land. How well these programs have been implemented is not clear. The GVN is also training ethnic minority farmers to adopt less nomadic farming techniques. Anecdotal observations suggest that ethnic minority farmers are less able to make the most of GVN agricultural extension programs compared to their Kinh neighbors.

Comment

17. (U) Land use and ownership have always been crucially important in Vietnam. The political legitimacy and credibility of the GVN and the Party rests in part on how it handles the tensions inherent in the effort to encourage economic growth while dealing with entrenched interests, often governmental, who hold land or otherwise profit from its allocation. Past efforts to allocate agricultural land rights in the have been somewhat effective in reducing tensions in undeveloped areas of the countryside. The GVN is only now facing up to the more complex issue of urban land, where the financial interests are greater and players more politically important. The intersection of public corruption and the sensitive issue of land allocation and use creates the most plausible scenario under which the CPV could lose the support of the population.

MARINE